

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

UNITED STATES OF AMERICA		DOCKET 4:20-CR-318
		AUGUST 17, 2023
VS.		
		2:04 P.M.
KEITH TODD ASHLEY		SHERMAN, TEXAS

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VOLUME 1 OF 1, PAGES 1 THROUGH 40

REPORTER'S TRANSCRIPT OF SENTENCING HEARING

BEFORE THE HONORABLE AMOS L. MAZZANT, III,  
UNITED STATES DISTRICT JUDGE

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FOR THE GOVERNMENT:	HEATHER HARRIS RATTAN U.S. ATTORNEY'S OFFICE - PLANO 101 E. PARK BOULEVARD, SUITE 500 PLANO, TX 75074
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PROCEEDINGS RECORDED USING MECHANICAL STENOGRAPHY;  
TRANSCRIPT PRODUCED VIA COMPUTER-AIDED TRANSCRIPTION.

1 (Open court, defendant present.)

2 THE COURT: Please be seated.

3 Okay. We're here in case 4:20-cr-318, *United*  
4 *States of America versus Keith Todd Ashley*.

5 And for the government?

6 MS. RATTAN: Good afternoon, your Honor. Heather  
7 Rattan and Jason Fine for the United States.

8 THE COURT: Thank you.

9 And for the defendant?

10 MR. WHALEN: James Whalen and Ryne Sandel for  
11 Mr. Ashley, your Honor. Good afternoon.

12 THE COURT: Very good.

13 And, Mr. Ashley, if you'll just take the podium at  
14 least for a minute so we can discuss some of the  
15 preliminary matters -- or stand up by the mic.

16 Okay. Sir, you're here for your sentencing  
17 pursuant to your final presentence report that was filed on  
18 July 28th, 2023. Have you had a chance to review the final  
19 presentence report, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you had a chance to discuss it  
22 with your counsel?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you believe the report adequately  
2 covers your general background?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And are you satisfied with the  
5 accuracy of the report other than the objections your  
6 counsel has filed?

7 THE DEFENDANT: Yes.

8 THE COURT: And then, Mr. Whalen, have you had a  
9 chance to review the final presentence report with your  
10 client; and do you believe he understands it?

11 MR. WHALEN: I have reviewed it with him; and he  
12 understands it, your Honor.

13 THE COURT: Okay. And do you have -- other than  
14 the objections you filed -- any other comments, additions,  
15 or corrections?

16 MR. WHALEN: No, your Honor.

17 THE COURT: On behalf of the government,  
18 Ms. Rattan, any comments, additions, corrections, or  
19 objections?

20 MS. RATTAN: No, your Honor.

21 THE COURT: And, Mr. Whalen, you filed a number of  
22 objections. If you will go ahead and start and go through  
23 those.

24 MR. WHALEN: Yes, your Honor.

25 As it relates to the objections, there's 14

1 objections. As far as it relates to Objections 1 through  
2 11, we'll rest on our written objections and re-urge them  
3 but just rely on what we have written as it relates to  
4 those. So I just want to focus on 12, 13, and 14.

5 THE COURT: And, of course, 1 through 11 do not  
6 impact the guideline calculations. They are factual  
7 challenges. Most of them go to the issue of information  
8 provided to Probation, that some of the issues may not have  
9 come up at trial in terms of testimony, correct? That's --

10 MR. WHALEN: That's correct, your Honor.

11 THE COURT: Ms. Rattan, did you want to make any  
12 response to any of those?

13 MS. RATTAN: No. Of course, as the Court knows,  
14 the probation officer's responses are very thorough.

15 THE COURT: Yes. So I will incorporate the  
16 responses by Probation and just add that -- and overrule  
17 the objections based on a preponderance of the evidence.  
18 The statements provided by Probation in the PSR have  
19 sufficient indicia of reliability based on preponderance of  
20 the evidence to support those; so I will overrule those  
21 factual objections.

22 Okay. If you want to go ahead and address --

23 MR. WHALEN: Yes, your Honor. I'm going to start  
24 with Objection 14. Obviously, the Court is aware that we  
25 have filed a Rule 29 motion that is still pending.

1 THE COURT: No. It's been denied.

2 MR. WHALEN: Okay.

3 THE COURT: So -- I signed it this -- well, I  
4 signed it sometime -- it was probably docketed in the last  
5 hour.

6 MR. WHALEN: Okay.

7 THE COURT: So the whole motion, every count --  
8 every aspect of the motion was denied.

9 MR. WHALEN: Well, once again I, out of an  
10 abundance of caution, will re-urge the Rule 29 motion as  
11 not to waive anything in the presentence report. We  
12 believe that based on the evidence that was presented, that  
13 the presentence report does not adequately reflect or  
14 calculate it correctly because the evidence was  
15 insufficient on the counts that we mentioned in our  
16 Rule 29. And so we re-urge and object to the entirety of  
17 the presentence report as written because the evidence did  
18 not support those counts and those convictions, and we  
19 re-urge those at this time.

20 THE COURT: I understand.

21 Any response?

22 MS. RATTAN: We'd rely on our response in  
23 Document 217.

24 THE COURT: Yes. And the Court will rely -- I  
25 know you haven't seen it yet. You have not had a chance to

1 read it because it literally probably just got docketed  
2 before we came out onto the bench. It was involved; so  
3 that's why it took us a long time to get it done. My goal  
4 is to always have those done prior to sentencing.

5 But I will stand on the grounds there and, of  
6 course, overrule the objection. I do believe there is  
7 sufficient evidence for the jury finding in this case.

8 MR. WHALEN: Your Honor, we would then move to  
9 Objection 12, which relates to the guideline calculations  
10 as it relates to the fraud counts. They have attributed --  
11 first, we'll talk about loss. Once again, as it relates to  
12 the loss, we believe the loss was incorrectly calculated.

13 As we stated in a previous objection as relates to  
14 Mr. Greening, the testimony at trial indicated that he did  
15 invest \$75,000 initially with Mr. Ashley. Then he invested  
16 another \$75,000 for the brewery and the hand sanitizer; and  
17 then after their call, he then refunded \$75,000. So,  
18 therefore, if we were using first in, first out principles,  
19 when he made an objection to Mr. Ashley about it, it was  
20 returned to him; so we believe that \$75,000 should not be  
21 included in a loss calculation.

22 Additionally, as it relates to Brenda Stewart,  
23 Gloria Dietrick, Ethel White, Alice Newton, and Fred  
24 Reeves, there is no evidence other than what I perceive to  
25 be is simply their statements that they lost money or were

1 a victim in the case. It's not charged conduct. It's  
2 remote in time and, therefore, shouldn't count as relevant  
3 conduct and be included in a loss calculation. So we  
4 object to that loss calculation.

5 And then also the -- and I'll keep going as it  
6 relates to loss. They indicated an intended loss to  
7 Midland National of \$2 million. We don't think that is an  
8 accurate -- should be included in loss, for a couple  
9 reasons. One, there was no actual loss to Midland; and  
10 there was never going to be any intended loss to Midland  
11 National because Mr. Ashley was never the beneficiary of  
12 that policy and the evidence showed they were contractually  
13 obligated to pay it. So there is no intended --

14 THE COURT: But he was the trustee of -- he got  
15 the -- he changed the beneficiary from the spouse to  
16 himself as trustee; and so isn't it a reasonable inference  
17 to do that that he was going to take the money if they --

18 MR. WHALEN: No, I --

19 THE COURT: -- did fund it?

20 MR. WHALEN: No, I don't think it is because I  
21 think if you --

22 THE COURT: Well, how can you say that? I mean,  
23 you sat through this trial and everything he did. How can  
24 you -- how can you even say that with a straight face?

25 MR. WHALEN: I can say it -- I will say it with a

1 straight face because he was the trustee. But if you  
2 listen to the phone calls that were presented, Mr. Seegan  
3 made that change. He signed it, and he made that change.

4 THE COURT: At the request of Mr. Ashley.

5 MR. WHALEN: Right. But then if you listen to the  
6 testimony --

7 THE COURT: As part of his scheme.

8 MR. WHALEN: If you listen to the testimony of the  
9 trust lawyer who created the trust, he said that Mr. Seegan  
10 was very adamant about creating it, was definitive in  
11 creating it, and made Mr. Ashley the trustee.

12 Just because you're the trustee -- he was never  
13 the beneficiary. And I think there is a distinction, and I  
14 think they got melded at trial that all of a sudden this is  
15 part of the government's theory that this was a scheme --

16 THE COURT: So tell me why Mr. Ashley goes through  
17 this process of getting him to increase the amount of the  
18 life insurance policy, getting him to change the  
19 beneficiary from his wife to Mr. Ashley.

20 MR. WHALEN: Because that's what the client  
21 instructed Midland National and his lawyer that he wanted  
22 to do.

23 THE COURT: Go ahead and go on.

24 MR. WHALEN: And so it shouldn't be included in  
25 loss and, therefore, actual loss is \$908,833 and actual



1 loss should be used. We rely on *United States versus Banks*  
2 that actual loss -- the guidelines only intended for actual  
3 loss, not intended loss. And so we believe the correct  
4 loss amount should be \$908,833.

5 THE COURT: Ms. Rattan?

6 MS. RATTAN: Well, as the Court points out, it is  
7 disingenuous. And it's a fraud on this Court to claim that  
8 the defendant was not going to get any benefit when James  
9 Seegan was murdered. Midland Life was here. Multiple  
10 witnesses from Midland Life testified.

11 It was the defendant who was swindling and  
12 encouraging James Seegan to change the beneficiary. Was he  
13 the trustee? Yes, but he also changed the beneficiary.

14 Would James Seegan have changed the beneficiary to  
15 Keith Ashley had he known Keith Ashley was going to kill  
16 him? Of course not. It's disingenuous to make that  
17 argument. Of course, the Court heard the evidence and the  
18 testimony.

19 And then on Robert Greening, to argue that the  
20 defendant, when he is confronted with stealing money from  
21 Mr. Greening, gave some of it back so he shouldn't be  
22 charged with the loss, that's -- it's disingenuous.

23 And in terms of what the actual loss amount was,  
24 the United States -- or intended loss and actual loss  
25 amount, the United States probation officer came up with a

1 chart on page 12. It's in paragraph 41, and it's a very  
2 nice summary of what actually the losses were.

3 The only thing I'd point out is at the very bottom  
4 it says "Midland National" and the intended loss for  
5 Midland National is listed at 1.5 million. The loss that  
6 Midland National had was 2.4 million because there was a  
7 \$2 million policy that was taken out on James Seegan's  
8 life, and that was what was placed in the trust where the  
9 defendant was the beneficiary of the trust. But there was  
10 also a \$400,000 policy that was to be paid to Mr. Seegan's  
11 wife, Dida; and that was a diversionary tactic that the  
12 defendant used with Mr. Seegan's wife -- "Oh, I'm so sorry  
13 for your loss; but you are going to get \$400,000" -- to  
14 distract her from knowing that there was actually a  
15 \$2 million policy that the defendant was the beneficiary  
16 of.

17 So this would be -- right there, the Midland Life,  
18 it would be \$2 million; and then the additional loss to  
19 Midland Life because of the defendant's murder would have  
20 been the \$400,000 that went to Mrs. Seegan.

21 So the loss amount -- intended loss, actual  
22 loss -- is accurately calculated.

23 THE COURT: Wait. You say it is accurately  
24 calculated, but then you assert that the amount for Midland  
25 National is incorrect.

1 MS. RATTAN: Well, in terms of the range that's  
2 applied, I don't think it will affect the range.

3 THE COURT: Okay.

4 MS. RATTAN: Yes.

5 THE COURT: But you are -- you point that Midland  
6 National, it should be a higher amount for --

7 MS. RATTAN: It should be. And in support of  
8 that, we would offer as Government's Exhibit Number 1 at  
9 sentencing. It's the timeline and chart that the United  
10 States presented to the jury, and it tracks exactly what  
11 happened with the life insurance policies.

12 May I approach to offer that, your Honor?

13 THE COURT: Yes.

14 Okay. I'll go ahead and admit Government's  
15 Exhibit 1 for purposes of sentencing.

16 MS. RATTAN: And then on the top row, the first  
17 two green tiles talk about the life policies and summarize  
18 exactly what happened with those.

19 THE COURT: Mr. Whalen, do you have a copy of  
20 that, too? Just make sure you have a copy.

21 MR. WHALEN: I do, your Honor.

22 THE COURT: Okay. Anything else the government  
23 wants to say regarding this?

24 MS. RATTAN: No, your Honor.

25 THE COURT: Mr. Whalen, anything else you want to

1 add?

2 MR. WHALEN: No, your Honor.

3 THE COURT: Can I just have Probation approach  
4 very quickly.

5 (Off-the-record discussion between the Court and  
6 probation officer.)

7 THE COURT: Okay. I'm going to overrule  
8 Objection 12. Based on a preponderance of the evidence, it  
9 is clear that there is enough evidence in this record to  
10 support what the loss amount would be --in terms of  
11 intended loss -- is all that's required for the guideline  
12 calculation.

13 I will add the government is correct that the  
14 Midland National -- that intended loss is actually -- is  
15 the 2.4 million. It doesn't impact the guideline  
16 calculation because we're still within the range. It goes  
17 up to 9 million.

18 And I know you object to Mr. Greening; but, again,  
19 all these amounts are correct other than the Midland  
20 National should be 2.4 million. The other loss -- intended  
21 losses are correct. Mr. Greening did get paid back one of  
22 the amounts but never got paid back the second amount. So  
23 those intended losses are supported by the record and by  
24 the presentence report and based on a preponderance of the  
25 evidence. So the Court will overrule that objection.

1 I would also indicate that I agree with the  
2 government -- their terminology was better than mine --  
3 that it is disingenuous for the defendant to make the  
4 argument he's making so -- he was the one benefitting from  
5 all of these schemes, and he was the one that was intended  
6 to benefit from the death of Mr. Seegan.

7 Okay. What's next?

8 MR. WHALEN: Your Honor, and maybe I shouldn't  
9 have done this but -- and Mr. Sandel told me not to, but I  
10 did it anyway -- was that I lumped all of the objections to  
11 the guideline calculation in 12 so --

12 THE COURT: Okay. Go to the next part of it,  
13 then.

14 MR. WHALEN: Okay. So --

15 THE COURT: Yeah, you probably shouldn't have done  
16 that.

17 MR. WHALEN: Yeah, I probably shouldn't have.

18 Paragraph 59 is the two-level enhancement for  
19 sophisticated means. I mean, the Court heard the evidence;  
20 and I think -- the objection is based on I don't think it  
21 was sophisticated, and I think this is probably one of the  
22 most overused enhancements and so does it really have any  
23 meaning anymore and should be applied.

24 I mean, I think --

25 THE COURT: I think it does have meaning. And if

1 this isn't a sophisticated means crime, I don't know what  
2 would be. I mean, look at the steps he took throughout all  
3 of this, from the Ponzi scheme by itself and the financial  
4 crimes to staging a murder suicide and the steps that he  
5 took to do that. How can that not be sophisticated?

6 I mean, he even went so far as to do the dual  
7 authentication, going to the widow's house, using his phone  
8 to get the authentication to make the \$20,000 transaction.  
9 All of this seems very sophisticated to me. Why isn't that  
10 the case?

11 MR. WHALEN: Your Honor, I will just rest on my  
12 written statements, your Honor.

13 THE COURT: Any response from the government?

14 MS. RATTAN: The evidence speaks for itself.

15 THE COURT: I agree. This record is clear that  
16 this enhancement is appropriately applied. There were so  
17 many -- I mean, I didn't list all of the things that would  
18 qualify as being sophisticated; but it is clear through his  
19 multiple schemes. It was clearly a sophisticated  
20 operation, and I will overrule the objection based on a  
21 preponderance of the evidence.

22 What's your next --

23 MR. WHALEN: Paragraph 60, the four-level  
24 enhancement for broker/dealer as it related to securities  
25 law. We would object on it because Parkland Securities

1 stated in paragraph 108 they had terminated him for  
2 engaging in outside business; so it wasn't associated with  
3 the broker/dealer. So, therefore -- we believe that,  
4 therefore, since it didn't relate to any type of securities  
5 law violation or, as far as Parkland was concerned,  
6 something he did outside of their broker/dealer license,  
7 that the four-level enhancement should not apply.

8 THE COURT: Ms. Rattan?

9 MS. RATTAN: He was using that license, and the  
10 probation officer chronicles the timeline. He wasn't  
11 barred from acting as a broker until December 10th of 2021.  
12 So he had the license, and he was using it during the  
13 crime.

14 THE COURT: I agree. And, of course, the  
15 probation officer -- and I'm not going to read the whole  
16 paragraph into the record. I will incorporate it. You've  
17 seen it, Mr. Whalen.

18 Probation points out that there was no requirement  
19 that the defendant be employed at the time for the specific  
20 offense characteristic to apply. But I will incorporate  
21 the probation officer's response, which is very detailed,  
22 and overrule this objection based on preponderance of the  
23 evidence.

24 What's next?

25 MR. WHALEN: Your Honor, Defendant's Objection 13

1 goes to restitution; and we will -- we believe the proper  
2 restitution amount should be no more than \$908,833 for the  
3 reasons stated in the loss calculation and we'll stand on  
4 our written argument as it relates to restitution.

5 THE COURT: Okay. Ms. Rattan?

6 MS. RATTAN: Again, paragraph 41 is a summary of  
7 the loss; and I think those should be the values that are  
8 recognized for restitution with the additional amounts to  
9 Midland National.

10 THE COURT: Okay. Can I have Probation approach  
11 on this.

12 (Off-the-record discussion between the Court and  
13 probation officer.)

14 THE COURT: Okay. I just wanted to discuss with  
15 Probation because looking at the issue of the restitution  
16 amount, of course, that goes to actual loss.

17 I know, Ms. Rattan, you're asking the Court to  
18 include, I think, the 400,000 or the additional monies; but  
19 those aren't actual losses that can be counted. They are  
20 intended losses. That's what he intended, to get those  
21 monies. But if they had actually paid those monies to the  
22 widow or something like that, that doesn't cause -- it only  
23 becomes an actual loss if those actually -- he had  
24 succeeded in him getting the money. So I don't believe --  
25 I think it should be classified as zero as the actual loss



1 to Midland National for purposes of Mr. Ashley.

2 Otherwise, I do think the appropriate amount is  
3 the 1.7 and change for restitution. I understand you have  
4 objection to that, but I believe that is the actual loss.  
5 So I think that's supported by the presentence report, and  
6 I'll overrule your objection based on preponderance of the  
7 evidence.

8 That's your only objection as related to the  
9 restitution amount?

10 MR. WHALEN: Right.

11 THE COURT: Okay.

12 MR. WHALEN: Based on the case law we cited in --  
13 that some of that restitution is not related to the charged  
14 conduct and --

15 THE COURT: Well, and again, you know, the  
16 statute, in terms of the MVRA, looks at general relevant  
17 conduct. So I do believe everything that has been included  
18 has been properly included, but I understand you disagree  
19 and I'm sure that's something you will take up later with a  
20 higher court.

21 What's next, Mr. Whalen?

22 MR. WHALEN: Your Honor, that would conclude all  
23 the objections to the presentence report.

24 THE COURT: Okay. So, Mr. Ashley, if you'll stand  
25 back up with your counsel.

1           So, Mr. Ashley, of course, you went to trial. The  
2 jury got to consider all of the charges and convicted you  
3 of all counts. And so you were convicted of Counts 1  
4 through 6, which is wire fraud affecting a financial  
5 institution and attempted wire fraud. Counts 9 through 14  
6 and Count 20 were wire fraud and attempted wire fraud.  
7 Counts 15 and 16 were mail fraud and attempted mail fraud.  
8 Count 18 was carrying or discharging a firearm during a  
9 crime of violence or possession of a firearm in furtherance  
10 of a crime of violence causing death or murder by robbery.  
11 And, Count 19, attempted bank theft and bank theft. And,  
12 of course, the jury considered all of these, I think after  
13 an eight-day trial, and did convict you of all these  
14 charges.

15           So the Court finds that the information contained  
16 in the presentence report has sufficient indicia of  
17 reliability to support its probable accuracy. The Court  
18 adopts the factual findings, undisputed facts, and the  
19 guideline applications in the presentence report.

20           Based upon a preponderance of the evidence  
21 presented and the facts in the report, while viewing the  
22 sentencing guidelines as advisory, the Court concludes as  
23 follows: Your total offense level is a 43, your criminal  
24 history category is a 1, which comes to an advisory  
25 guideline range of 360 months for Counts 1 through 6;

1 240 months for Counts 9, 10, 11, 12, 13, 14, 15, and 16;  
2 life for Count 18; and life for Count 19; and for Count 20,  
3 240 months.

4 So I know that the defense has submitted a number  
5 of documents to the Court that the Court has looked at as  
6 well as the letters, but I will call upon Mr. Whalen if you  
7 want to go first on what you think the appropriate sentence  
8 should be in this case.

9 MR. WHALEN: Well, your Honor, I think at this  
10 point it's kind of moot what I think the appropriate  
11 sentence is because you're kind of -- I think you're stuck  
12 statutorily.

13 And we have expressed and I think I have expressed  
14 and advocated for my client -- and not being disingenuous  
15 about it -- that we have reasons that we've expressed  
16 throughout this trial.

17 And so I don't think a sentence of life is  
18 appropriate. I think what we put in our memo that he  
19 should be sentenced on the wire fraud counts would be  
20 appropriate, but that's not where we stand today.

21 And so we'll leave it to the Court to decide that,  
22 but I think statutorily you are stuck where you are. And  
23 so I'll leave it at that.

24 THE COURT: Ms. Rattan, before I call upon you, I  
25 didn't know if there were any victims of his financial

1 crimes or any of the victims at all that have a desire to  
2 say anything.

3 MS. RATTAN: Your Honor, yes, there are victims  
4 who are present; but I don't believe anyone cares to  
5 allocute.

6 THE COURT: Okay. That's fine. I just wanted to  
7 check.

8 MS. RATTAN: No. Thanks for asking.

9 THE COURT: I will call upon you to comment on  
10 what you think the appropriate sentence should be in this  
11 case.

12 MS. RATTAN: Well, of course, the appropriate --  
13 the only appropriate sentence in this case is life. The  
14 only question is how the Court fashions the sentence.

15 So we filed a motion, as the Court knows, for  
16 variance; but we also filed a motion asking the Court to  
17 impose consecutive sentencing. And it's Title 18 United  
18 States Code, Section 3584, that speaks to consecutive  
19 sentencing.

20 There's a phrase in 3584 that says that  
21 consecutive sentencing can be imposed except that the terms  
22 may not run consecutively for an attempt and for another  
23 offense that was the sole objective of the attempt.

24 So, of course, we've charged attempt in multiple  
25 of these counts; but we believe because the defendant was

1 running, essentially, four separate schemes, that there  
2 were different objectives of these four separate schemes  
3 and, because of that, the Court can impose consecutive  
4 sentencing on the counts that involve these separate  
5 schemes.

6 So we outlined for the Court in our filing, which  
7 is Document 230, what we believe the four separate schemes  
8 are. And you've, of course, got, first, the Ponzi scheme  
9 that's reflected in Counts 1 through 6.

10 Then you have the murder of Mr. Seegan, and that's  
11 largely reflected in Counts 9 through 13 and then 15 and  
12 16.

13 You have the other scheme, which is outlined in  
14 Count 14, which is, after Mr. Seegan had been murdered by  
15 the defendant, the defendant attempting to steal and, in  
16 fact, actually stealing the \$20,000 out of Mr. Seegan's  
17 Texas Capital Bank.

18 And then the final scheme that was presented in  
19 the evidence was the defendant's attempt to get Paul  
20 Villareal's life insured for \$400,000 and lie about the  
21 defendant's relationship to Paul Villareal and claim that  
22 he was his brother-in-law.

23 So you have four separate objects --

24 THE COURT: Was the allegation that he was the  
25 brother-in-law or stepbrother?

1 MS. RATTAN: I think it was -- maybe stepbrother.  
2 I'm sure it's on our chart here.

3 It is the blue tile on the top row. Stepbrother.

4 THE COURT: Okay.

5 MS. RATTAN: Stepbrother.

6 THE COURT: No, I just -- because I made that  
7 change in my opinion so I -- from brother-in-law to  
8 stepbrother. So that's why. Okay.

9 MS. RATTAN: Anyway, there's four separate schemes  
10 so four separate objectives in what he's trying to  
11 accomplish; so based on that, we believe it would be  
12 appropriate under 3584 to do consecutive sentencing in this  
13 case.

14 And what we would suggest is that Counts 1 through  
15 6, specifically focusing on either Count 1 or 3, be served  
16 consecutively to either Count 9 -- one selected out of  
17 Counts 9 through 13, 15, and 16 because 9 through 13 and 15  
18 and 16 all relate to the scheme where he's becoming the  
19 beneficiary of the \$2 million life insurance policy and  
20 murdering James Seegan.

21 And then Count 20 reflects the Paul Villareal  
22 scheme; and, as I said before, Count 14 is the scheme after  
23 James Seegan's been murdered, where he's trying to get the  
24 \$20,000 out of Mr. Seegan's account.

25 So the Court would select, we would recommend,

1 Count 1 or 3 out of the Ponzi scheme counts.

2 And then in Counts 9 through 13, 15, and 16, we  
3 would hope that the Court would select one of those counts  
4 to run consecutively to Count 1 or 3.

5 And then Count 14 would run consecutively to the  
6 previously listed ones because that's the Texas Capital  
7 Bank \$20,000.

8 And then, finally, Count 20 would run  
9 consecutively to the previous four counts.

10 And then I know we filed a motion for variance and  
11 I didn't say this in our motion for variance, but I would  
12 ask the Court to consider at sentencing a downward variance  
13 on Counts 1 through 6. It's at 360 now, 360 months. The  
14 reason that the punishment range on Counts 1 through 6 was  
15 increased from zero-to-20 to zero-to-30 was because of the  
16 effect on a financial institution. And the jury, of  
17 course, found, in each one of those counts, that there was  
18 an effect on a financial institution; but I think if the  
19 Court sentenced on either Count 1 or 3 at 240, it would  
20 obviate that issue in the future.

21 So if the Court downwardly varied to 240 months on  
22 either -- well, actually, on Counts 1 through 6 and using  
23 Count 1 or Count 3 as the consecutive sentence count and  
24 then did the remainder as I've outlined and did consecutive  
25 sentencing on those, that's what we would request and

1 recommend; and we believe that the law allows it.

2 And then make a finding that the Court is doing  
3 that irrespective of anything that the Court does on  
4 Counts 18 and 19.

5 THE COURT: Anything else, Ms. Rattan?

6 MS. RATTAN: No, your Honor. Thank you.

7 THE COURT: Mr. Whalen, do you want to address --  
8 I assume you're not opposed to the government's request for  
9 a variance on Counts 1 through 6.

10 MR. WHALEN: I'll get -- if I can just back up  
11 real quick.

12 I know I said that, you know, statutorily you're  
13 bound. But I will say, just to make sure I'm consistent in  
14 both our Sentencing Memorandum, is that we think the  
15 appropriate sentence, since you overruled the objections,  
16 would be what Probation calculated on the wire fraud counts  
17 and fraud counts of 135 to 168. We think it's 135 to 168.  
18 That should be the appropriate sentence for that; and they  
19 should run concurrently, not consecutively.

20 What I would say about the downward variance is I  
21 don't want to say I'm opposed to it -- that's their  
22 request -- or I agree with it or not. But I think what the  
23 Court -- I don't think you should run anything  
24 consecutively. You know, his sentence is life. What more  
25 does the government want, okay?



1           So -- but I think it's interesting, and I would --  
2           and maybe this is the time to say it or not. But why would  
3           they ask you to vary downward?

4           THE COURT: Well, I have to presume -- and, of  
5           course, I denied this in the motion for acquittal. I have  
6           to assume it's because the law in the Fifth Circuit is a  
7           little murky on the effect on a financial institution.

8           Other circuits have -- my understanding in doing  
9           the motion for acquittal -- have maybe started whittling  
10          away about how expansive that is to the government in terms  
11          of charging the effect on a financial institution.

12          The Fifth Circuit hasn't addressed that directly.  
13          There is an old case where they have done that, but I don't  
14          know if that still would necessarily be good law under this  
15          situation so -- and we relied upon that in denying the  
16          motion for acquittal because it's really the only statement  
17          from the Fifth Circuit, but we recognize that other  
18          circuits have -- in more modern times have looked at it a  
19          little differently.

20          So I assume -- well, I think the government said  
21          she wants to take away that issue, that issue of effect on  
22          a financial institution. If I do a variance down for that  
23          reason, it takes away that issue from being a concern on  
24          appeal.

25          MR. WHALEN: So I would say that if the Court is

1 going to vary downward, we're not opposed to the variance  
2 downward. We think the appropriate sentence should be the  
3 guideline sentence for the wire fraud counts, and we don't  
4 think that any of the counts should run consecutively to  
5 the life sentence.

6 THE COURT: Okay. Ms. Rattan, anything else you  
7 want to say before I call upon the defendant?

8 MS. RATTAN: No, your Honor.

9 THE COURT: Okay. Mr. Ashley, you have the right  
10 to address the Court prior to sentencing. Now would be the  
11 time if you would like to say anything.

12 MR. WHALEN: Your Honor, I have instructed  
13 Mr. Ashley not to allocute, in fear of any type of waiver;  
14 and so he's going to follow that advice and not address the  
15 Court at this time.

16 THE COURT: Okay. That's fine.

17 Okay. Any reason why the Court should not  
18 pronounce sentence at this time?

19 MS. RATTAN: No, your Honor.

20 MR. WHALEN: No, your Honor.

21 THE COURT: And then can I have Probation approach  
22 one more time.

23 (Off-the-record discussion between the Court and  
24 probation officer.)

25 THE COURT: Okay. So the first step the Court

1 must do is determine the guideline range that is applicable  
2 to this case; and then after that, my obligation is to  
3 determine what's the appropriate sentence for the  
4 defendant. A sentence should not be greater than necessary  
5 to accomplish the purposes of the sentencing, as set forth  
6 in 18 USC, Section 3553(a).

7 In reaching the sentence today, I have fully and  
8 thoroughly considered all of the ramification of the  
9 guidelines. I've considered the nature and circumstance of  
10 the offense. I've considered the need for deterrence and  
11 promoting the respect for law of others who might be  
12 considering these offenses and to promote proper respect  
13 for the law by the defendant.

14 I also looked at the need to protect the public  
15 from future crimes of the defendant and also looked at the  
16 history and characteristics of the defendant, and then also  
17 I looked at the issues of the victims.

18 Now, first off is we have the government  
19 requesting the Court vary on Counts 1 through 6 based upon  
20 the concern about the effect on the financial institution.  
21 The defendant is not opposed to that; so I will grant that  
22 request based on motion by the government and it being  
23 agreed to by the defendant. And, again, it just takes away  
24 the issue of the impact on the financial institution, which  
25 is what caused those counts to go up from zero-to-20 up to

1 zero-to-30.

2           So then the question is, in looking at all these  
3 sentences, too, the issue of whether sentences should be  
4 consecutive or not in terms of how we look at this. And,  
5 of course, whether I do it as another variance up or as a  
6 departure, I do think it's appropriate because I don't  
7 think, despite -- I know, Mr. Whalen, you make an eloquent  
8 argument about why it shouldn't be -- I shouldn't impose  
9 consecutive sentence. I just strenuously disagree with  
10 you. I have sat through this trial; and, of course, the  
11 jury convicted the defendant of all these counts.

12           And so we have a story of fraud and death. And on  
13 the fraud side, the defendant caused, you know, great  
14 financial losses to basically fund his own personal  
15 lifestyle and expenses.

16           And, you know, as the government pointed out,  
17 there were multiple schemes among multiple schemes as we  
18 look at this, whether the Ponzi scheme or after the death  
19 of Mr. Seegan or after his death the scheme to obtain some  
20 of the money from his account; and then we have  
21 Mr. Villareal. So there's all these multiple schemes of  
22 fraud.

23           And I look at your conduct as being very extreme.  
24 There is a complete lack of remorse, in my view, on your  
25 part. And I understand your attorney doesn't want you to

1 speak, but I thought it was really telling. One paragraph  
2 in the presentence report jumped out at me as relates to  
3 you, Mr. Ashley. It is paragraph 96. "The defendant  
4 advised he still feels caught off guard by his situation.  
5 He hopes to be able to return to the community and his  
6 children soon." It just struck me that you're totally  
7 oblivious to all of this harm and things you've caused.

8           You also -- the Court has to look to the  
9 seriousness of the crimes you've committed. We have to  
10 ensure -- the Court needs to ensure there is adequate  
11 deterrence so this does not happen to someone else, and I  
12 also have to protect the community from your criminal acts  
13 and provide adequate protection.

14           I can't get -- there is nothing I can do about  
15 Mr. Seegan in terms of seeking, you know, justice for him,  
16 plus the justice for all of the other victims of your  
17 financial crimes. But, you know, when I look at that, the  
18 guidelines just don't account for all of these things; and  
19 so I do believe that the maximum sentence the Court can  
20 impose by doing consecutive is appropriate.

21           And the Court looks at 18 USC,  
22 Section 3553(b)(2)(A)(i). When there is any kind of  
23 aggravating circumstances, the Court is allowed to do this;  
24 and in the Court's view, the guidelines don't account for  
25 all of this.

1           You also had all this specialized knowledge, you  
2 know, as a nurse and the use of medicine. And, you know,  
3 from what I remember from the trial -- maybe I'm wrong on  
4 this, but it was just basically the drug you used to  
5 paralyze him or knock him out for the short five or so  
6 minutes that that medicine lasts just happened to be  
7 detected because it went to a lab that actually tests for  
8 that.

9           And so all of that was really calculated for you  
10 hoping to avoid anyone ever finding out what you did, and  
11 you did all of this for money because of -- whether it's  
12 your gambling or whatever you were doing with all this  
13 money, you know, you used that knowledge to perpetuate this  
14 scheme and killed somebody.

15           And then there are other victims, too, who are not  
16 part of these charges, like your mother-in-law who you also  
17 took money from; and these victims of your financial crimes  
18 will never be made whole. That's never going to happen.  
19 And some of the victims, you know, won't live enough to see  
20 any kind of justice.

21           And the reason why all of the -- consecutive  
22 sentences are appropriate, among all these other reasons,  
23 is that the Court does have an obligation to protect  
24 society. And the maximum sentence that the Court can give  
25 is what should happen because you should never be out of

1 jail ever again for what you've done in this case.

2 And the Court also looks at, you know, deterrence;  
3 and, hopefully, someone getting a life sentence will,  
4 hopefully, deter others from taking life and doing all of  
5 these crimes.

6 And then, of course, I can't say enough about what  
7 you did to Mr. Seegan who trusted you and, you know, put  
8 his trust in you, unfortunately for him. I wish he hadn't,  
9 but he did. And you basically murdered him, staged his  
10 suicide, and all for the sake of trying to get money and  
11 then -- and basically also cheat out his widow in the  
12 process.

13 The other thing is that, you know, you did do this  
14 in a scheme. This wasn't -- when the government says you  
15 were disingenuous in all of these actions, you definitely  
16 were because you put yourself as trustee. I mean,  
17 considering all of the other financial crimes you've  
18 committed, it is clear indication; and we can imply that  
19 you were going to take that money, too. And so -- and  
20 that's why you had the \$400,000 policy is to placate her.  
21 She would have never probably ever known about the  
22 \$2 million policy that you put yourself as the trustee.

23 So -- oh, and then I do want to mention  
24 Mr. Villareal because you look at him. Would he still be  
25 alive today if the policy had been approved and -- you

1 know, you took out a policy on somebody else, claiming to  
2 be a relative of his.

3 You know, so for all of those reasons, whether  
4 it's a variance or a departure up, I am going to do that to  
5 stack as many of the sentences as I can.

6 I don't necessarily agree with the government how  
7 I'm going to do this. I did talk with Probation to kind of  
8 see how to do that and so I'm trying to accomplish that in  
9 grouping even though I don't necessarily agree with the way  
10 the government grouped them, but I am going to do it in a  
11 way. And the whole sole purpose for all of the reasons  
12 I've stated this should be done is in my desire to give you  
13 the maximum sentence I can give you under the law.

14 And just so you know, even if I'm wrong on these  
15 objections, for all the reasons I stated -- those were all  
16 grounds -- I would give you the same sentence. So even if  
17 you go get me reversed on these objections, I would give  
18 you the same sentence I'm giving you today. So whichever  
19 way I have to do it to figure it to get there, I would do  
20 that because if I can't make it very clear for what you've  
21 done in all of this case -- I've said it before, and I'll  
22 say it again -- you should never be out in the public ever  
23 again. You're a complete danger to society and you did  
24 this as a calculated move and you should never be out in  
25 the public again.



1           So pursuant to the Sentencing Reform Act of 1984,  
2           having considered the factors noted in 18 USC,  
3           Section 3553(a), and having consulted the advisory  
4           sentencing guidelines, it is the Judgment of the Court that  
5           the defendant, Keith Todd Ashley, is hereby committed to  
6           the custody of the Bureau of Prisons to be imprisoned for a  
7           total term of life.

8           The term consists of 240 months on each of  
9           Counts 1, 2, 3, 4, 5, and 6; 240 months on Counts 9, 10,  
10          11, 12, 13, 14, 15, 16, and 20; and terms of life on each  
11          of Counts 18 and 19 of the Fourth Superseding Indictment.

12          The Court is imposing Counts 1, 2, 3, 4, 5, and 6  
13          to run consecutively to Counts 9, 10, 11, 12, 13, 14, 15,  
14          16, 18, and 19 and Count 20 to run consecutively to all  
15          other counts.

16          This sentence is imposed in consideration of the  
17          factors set forth in 18 USC, Section 3553(a), and the  
18          provisions of 18 USC, Section 3584.

19          The Court makes a factual finding that the  
20          offenses involved in Counts 1 through 6 arise from the same  
21          course of conduct involving a wire fraud scheme to obtain  
22          investment funds from various victims through fraudulent  
23          means.

24          Additionally, the Court makes a factual finding  
25          that Counts 9 through 19 involve the same course of

1 conduct, which is to commit acts of fraud in order to  
2 obtain control over a life insurance policy for the victim.

3 And, finally, the Court makes a factual finding  
4 that Count 20 involved a course of conduct to obtain a life  
5 insurance policy on victim P.V., which is Mr. Villareal,  
6 through fraudulent means.

7 Now, this sentence is to run concurrently with any  
8 sentence imposed in Docket Number F2100109 in the 195th  
9 District Court in Dallas County, which is the state  
10 corresponding parallel count -- or charges here.

11 The Court will recommend to the Bureau of Prisons  
12 you receive mental health treatment while in prison.

13 While incarcerated, it is recommended that you  
14 participate in the Inmate Financial Responsibility Program  
15 in accordance with the requirements of the Inmate Financial  
16 Responsibility Program.

17 If you participate in the program, you shall pay  
18 50 percent of your earnings per pay period to the  
19 defendant's outstanding monetary penalties.

20 It is further ordered the defendant must pay  
21 restitution totalling \$1,715,249.05 to the victims in the  
22 amounts listed in the "Restitution" section of the  
23 presentence report, which is due and payable immediately.

24 The Court finds you don't have the ability to pay  
25 a fine. I will waive the fine in this case.

1           The Court also finds you don't have the ability to  
2 pay interest. I'll waive the interest requirement in this  
3 case.

4           It is ordered you will pay the United States a  
5 special assessment of \$1,700, which is due and payable  
6 immediately; and that's \$100 per each of the counts that  
7 you were convicted by the jury.

8           Any monetary penalty that remains unpaid when your  
9 supervision commences is to be paid on a monthly basis at a  
10 rate of at least 10 percent of the defendant's gross  
11 income. The percentage of gross income to be paid with  
12 respect to any restitution and/or fine is to be changed  
13 during supervision, if needed, based on your changed  
14 circumstances, pursuant to 18 USC, Section 3664(k) and/or  
15 18 USC, Section 3572(d)(3), respectively.

16           If you receive any inheritance, any settlements  
17 (including divorce settlement and personal injury  
18 settlement), gifts, tax refunds, bonuses, lawsuit awards,  
19 and any other receipt of money (to include, but not be  
20 limited to, gambling proceeds, lottery winnings, and money  
21 found or discovered), you must, within five days of  
22 receipt, apply 100 percent of the value of such resources  
23 to any financial penalty ordered.

24           None of the terms imposed by this Judgment shall  
25 preclude or prohibit the government from enforcing the

1 unpaid balance of the restitution or monetary penalties  
2 imposed herein.

3 In the event the defendant is released from  
4 imprisonment -- I mean, I don't know that he needs  
5 supervised release because this is a life sentence; but  
6 just in case, the Court will impose supervised release of a  
7 term of five years. The term consists of five years on  
8 each of Counts 1, 2, 3, 4, 5, 6, 18, and 19 and a term of  
9 three years on each of Counts 9, 10, 11, 12, 13, 14, 15,  
10 16, and 20, all such terms to run concurrently.

11 Within 72 hours of release from the custody of the  
12 Bureau of Prisons, you must report in person to the  
13 probation office in the district where you are released.

14 You must not commit another federal, state, or  
15 local crime and must comply with the standard conditions  
16 that have been adopted by the Court. In addition, you must  
17 comply with the mandatory and special conditions and  
18 instructions that have been provided to you and your  
19 counsel as part of the presentence report prior to  
20 sentencing, which the Court hereby adopts.

21 And then, Mr. Whalen, did you get a chance to  
22 see -- I know there's been a change in the Fifth Circuit on  
23 the standard conditions based on our General Order 17-3.

24 MR. WHALEN: I think there were some in the  
25 presentence report --

1 THE COURT: These were not in the presentence  
2 report. It's the standard conditions --

3 Do we have a copy of those?

4 Let me look up and let me give you a copy so you  
5 can just go over it with your client. We've just been  
6 handing them out as we go.

7 The Fifth Circuit is now requiring us to go over  
8 these since they are part of the General Order. They are  
9 not part of -- we're going to be adding them to the  
10 presentence reports going forward. We just -- but --

11 And the question is, I mean, because I've given a  
12 life sentence -- do you want to go over those with your  
13 client? I just --

14 MR. WHALEN: I'll go over them real quick.

15 THE COURT: Yeah, go ahead, then.

16 (Off-the-record discussion between the defendant  
17 and Mr. Whalen.)

18 MR. WHALEN: Your Honor, we've reviewed them. He  
19 understands.

20 THE COURT: Okay. And so, Mr. Ashley, I do have  
21 to ask you. Do you understand those standard conditions?

22 THE DEFENDANT: Yes.

23 THE COURT: And I know you just had a chance to go  
24 over those, but do you have any questions about those?

25 THE DEFENDANT: No, sir.

1 THE COURT: Any objections to the standard  
2 conditions?

3 MR. WHALEN: No, your Honor.

4 THE COURT: Okay. And then, sir, you have the  
5 right to appeal. If you are unable to pay the cost of the  
6 appeal, you can apply to appeal *in forma pauperis*, which is  
7 without payment of fees. The Clerk of the Court will  
8 prepare and file a Notice of Appeal if you make that  
9 request. And with few exceptions, any Notice of Appeal  
10 must be filed within 14 days of the Judgment being issued.

11 And, also, would you like me to recommend some  
12 geographic location for placement purposes?

13 MR. WHALEN: Dallas-Fort Worth, your Honor.

14 THE COURT: Okay. I'll put DFW in the Judgment.  
15 It's not binding on the Bureau of Prisons, but I will -- it  
16 will be included as a recommendation.

17 Now, your presentence report is already part of  
18 the record; and it is placed under seal. It will remain  
19 under seal unless needed for purposes of appeal.

20 I don't believe there's any charges to dismiss.  
21 Are there prior indictments?

22 MS. RATTAN: Yes. It was a superseding  
23 indictment; so we'd move to dismiss the previous  
24 indictments.

25 THE COURT: Okay. I'll grant that request.

1 Anything further from the government?

2 MS. RATTAN: No, your Honor.

3 THE COURT: Anything further from defense?

4 MR. WHALEN: Just briefly, your Honor.

5 In order to preserve the record, we would object  
6 to the procedural reasonableness of the sentence imposed  
7 for all the presentence report objections and the guideline  
8 calculations.

9 We object to the substantive reasonableness of the  
10 sentence as it -- we believe it's more than sufficient and  
11 it's greater than necessary.

12 We would object to the consecutive sentences that  
13 have been imposed.

14 And we also object to the sentence in its entirety  
15 under the Eighth Amendment.

16 THE COURT: I understand, Mr. Whalen; and you can  
17 take that up with the appellate court. It is certainly  
18 this Court's view that a life sentence is what he deserves,  
19 and that's what the Court has imposed.

20 So anything further from the government?

21 MS. RATTAN: No, your Honor.

22 THE COURT: Nothing further from defense?

23 MR. WHALEN: No, your Honor.

24 THE COURT: Mr. Ashley, you're going to go back  
25 into custody of the marshals pending placement by the

1 Bureau of Prisons.

2 And court will be in recess.

3 (Proceedings concluded, 2:54 p.m.)

4 COURT REPORTER'S CERTIFICATION

5 I HEREBY CERTIFY THAT ON THIS DATE, AUGUST 31,  
6 2023, THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD  
7 OF PROCEEDINGS.

8

9

/s/  
CHRISTINA L. BICKHAM, CRR, RDR

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